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R.G., Appellant)	
)	
and)	Docket No. 07-294
)	Issued: March 28, 2007
U.S. POSTAL SERVICE, POST OFFICE,)	
Alice, TX, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

On November 13, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decisions dated May 26 and August 21, 2006. Because more than one year has elapsed between the last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

The issue is whether the Office properly refused to reopen appellant's case for reconsideration of his claim under 5 U.S.C. § 8128.

Appellant, a 45-year-old letter carrier, filed a Form CA-2 claim for benefits on December 8, 1991, alleging that he developed a plantar fascitis condition in his left foot causally related to factors of his employment. The Office accepted appellant's claim for plantar fascitis of the left foot.

On October 8, 2004 appellant filed a Form CA-7 claim for a schedule award. In support of his claim, he submitted: (a) a February 18, 1992 report from Dr. James M. Shaw, a general practitioner, who diagnosed plantar fascitis and opined that appellant was not ready to return to light duty; (b) a March 12, 1992 report from Dr. Thomas Maloney, a Board-certified family practitioner, who stated findings on examination, diagnosed chronic bursitis of the left foot and recommended that appellant be reassigned to a position requiring less walking; and (c) a copy of a decision from an unidentified administrative agency indicating that appellant could be entitled to a disability award.

By letter dated November 17, 2004, the Office advised appellant that he needed to submit additional information in support of his claim for a schedule award. The Office stated that appellant had 30 days in which to submit the requested information. Appellant did not submit any additional evidence.

By decision dated February 10, 2005, the Office denied appellant's request for a schedule award.

By letter dated June 8, 2005, appellant's attorney requested reconsideration. He stated that he had attached two reports from Dr. John C. Wright, dated March 16 and April 15, 2005. Dr. Wright's March 16, 2005 report stated findings on examination and reiterated the diagnosis of plantar fascitis of the left foot. Appellant's attorney asserted that the April 15, 2005 report contained an impairment rating based on appellant's left-sided plantar fascitis condition. However, the April 15, 2005 report was not included in the record contemporaneously with counsel's June 8, 2005 letter.

By decision dated May 26, 2006, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision. The Office stated that it had not received Dr. Wright's April 15, 2005 report, as it was not included with the reconsideration request as counsel had indicated.

By letter dated June 1, 2006, appellant's attorney requested reconsideration. On August 21, 2006 the Office received a copy of Dr. Wright's April 15, 2005 report, which rated appellant at a two percent impairment of the left lower extremity based on pain pursuant to Table 18-7, page 584 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition).

By decision dated August 21, 2006, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting

relevant and pertinent evidence not previously considered by the Office.¹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.²

In *William A. Couch*,³ the Board remanded the case because the Office failed to consider new evidence that it received prior to the issuance of its decision. The Board stated:

“The Federal Employees’ Compensation Act provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board’s jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision, it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board’s decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.”

ANALYSIS

With regard to the May 26, 2006 decision, appellant has not shown that the Office erroneously applied or interpreted a specific point of law, he has not advanced a relevant legal argument not previously considered by the Office and he has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted is not pertinent to the issue on appeal. Dr. Wright’s March 16, 2005 report stated findings on examination and reiterated the diagnosis of plantar fasciitis of the left foot. This report did not address the underlying issue of whether appellant had a ratable permanent impairment causally related to his accepted, left-sided plantar fasciitis condition. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁴ Appellant’s reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant’s claim for a review on the merits in its May 26, 2006 decision.

Following the May 26, 2006 decision, appellant’s attorney requested reconsideration and submitted Dr. Wright’s April 15, 2005 report. The Office received Dr. Wright’s April 15, 2005 report on August 21, 2006, the same day that it issued its decision rejecting appellant’s claim. Although this presents a slightly different picture from that presented in *Couch*, wherein the

¹ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

² *Howard A. Williams*, 45 ECAB 853 (1994).

³ 41 ECAB 548 (1990).

⁴ *See David J. McDonald*, 50 ECAB 185 (1998).

Office received evidence several days before its final decision, the Board finds that the principle of *Couch* applies with equal force.⁵ Because Dr. Wright's April 15, 2005 report was received but not reviewed by the Office in rejecting appellant's claim, the case must be remanded for a proper review of the evidence and an appropriate final decision on appellant's entitlement to compensation.

CONCLUSION

The Board finds that this case must be remanded to the Office for consideration of all the evidence submitted by appellant in support of his claim to be followed by a *de novo* decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 26, 2006 is affirmed. The August 21, 2006 decision is set aside and the case remanded for further action consistent with this decision.

Issued: March 28, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁵ See *Linda Johnson*, 45 ECAB 439 (1994).